

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 179 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 No
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SHASHIKANTBHAI ASHABHAI PATEL

Versus

PRAKASHBHAI SUMANBHAI PATEL

Appearance:

MR HM PARIKH for Petitioner

MR DC DAVE for Respondent No. 1, 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 26/07/2000

ORAL JUDGEMENT

Heard the learned counsel appearing for the parties. The appeal is admitted. Learned counsel Shri D.C.Dave waives service of notice. With the consent of the learned counsel appearing for the parties, this appeal is taken up for final disposal.

2. This appeal arises from the order passed below the application at Ex.5 in Special Civil Suit No.165 of 1999 wherein the main prayer of the appellant in respect of the suit land was not granted.

3. It appears from the record that there is no serious dispute about the fact that the appellant (original plaintiff) was the owner of the suit land. The suit land was sought to be transferred on the strength of a power of attorney, the genuineness of which is in dispute. It also appears that, at present, the original defendant No.2 is in possession of the suit land. Under the circumstances, it would be necessary and in the interest of justice that the land in dispute is preserved as far as its ownership and possession is concerned and any further complications should be avoided.

4. It is, therefore, ordered that the respondents-original defendants are restrained from transferring, alienating and encumbering the suit land as well as from putting up any construction upon the suit land till the final disposal of the suit. However, in the event of the respondents' intention to transfer the suit land, the respondents shall make an application before the trial Court and thereupon the trial Court will pass appropriate order in accordance with law. Accordingly, the appeal stands allowed with no order as to costs.

Sd/-

(KMG Thilake)

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